(6)

Ch. 15

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

(C)
M. A. No. 231 of 2007 Single Bench

Appellants:
(Non applicant Nos. 1, 4 & 5)

1. State of Chhattisgarh, through Executive Engineer, Rural Engineering Services, Kanker Division, Kanker (CG)

2. B. R. Pal, Sub Engineer, Rural Engineering Services, through Executive Engineer, R.E.S Kanker District Kanker (CG)

3. State of Chhattisgarh, through the Collector,Kanker, (CG)

P.R. No. 4911 07 Presented by Shri Sanjib Gupta Dated 09/2/07

Versus

Respondents:
Claimants

1. Shakuntala Jain, Wd/o late Ram about 28 years, by Caste 'Kalar',

2. Ku. Dileshwari Jain, S/o late Ram, aged about 14 years, by Caste 'Kalar',

3. Ku. Bhagrati Jain, S/o late Ram, aged about 5 years, by caste 'Kalar'

4. Siyaram Jain, aged about 50 years, by caste 'Kalar'

5. Dayawati Jain, aged about 45 years,

R-2 & R-3 are minors through R-1 Shakuntala Jain

All resident of village Pusawand, Post Pushwada, Tahsil Narharpur, Police Station, Kanker, District Kanker (CG)

Respondents:
(Non-applicants No. 2 & 3.)

6. Alok Mathur, Contractor, Chikhla Kasa, Millpara, Dalli Rajhara,CG

7. Vishnu Deo Singh, Main Road, Dalli Rajhara, Bhawchand Lunia,

(2) (2)

Gupta, Chowk, Dalli Rajhara (CG)

APPEAL UNDER SECTION 30 OF THE WORKMEN'S COMPENSATION ACT, 1923.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.
24.04.07

मामला क्रमांक MACC)No. 231 08 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

22.02.2007

Shri G. D. Vaswani, counsel for the appellants.

Heard on M.C.P. No. 329/2007 for condonation of delay of 441 days in filing this appeal against the order dated 22.9 2005 passed by the Commissioner for Workmen's Compensation (Labour Court) Jagdalpur in C.O.C.No/B/74/W.C.Fatal/1/2004 awarding compensation of Rs. 2,16,482 to respondents No. 1 to 5/claimants for the death, during the course of employment, of one labourer Ram, aged about 30 years engaged in digging work on 14.4.2004 when the stop dam under construction in Khallari canal Saranda suddenly collapsed.

Learned counsel for the appellants submitted that the State is not questioning its liability to pay compensation in this appeal, but is questioning only the quantum of compensation.

In the application for condonation of delay, the following grounds have been mentioned.

1. "That, the appellants being the State have to take sanction for challenging any order passed by any Court of law. The delay so occurred was due to so many procedures involved for obtaining sanction for filing of appeal.

2. It is further submitted that public money is involved in the matter and for this reason the Hon'ble Court should take a lenient view for condoning the delay.

3. That, delay in filing the instant appeal is bonafide and not deliberate, therefore the appellants pray that the Hon'ble Court may be

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मामला क्रमांक MA(C).NO.231 of 06 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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pleased to condone the delay in filing the instant appeal in the interest of justice".

The affidavit filed in support of the application also does not specifically mention any of the grounds mentioned above but simply mentions that the aforesaid grounds are true and correct on the basis of information received from the record of the case and believed to be true.

Learned Government Advocate placed reliance on *State of Nagaland Vs. Lipok Ao & Others* (2005) 3 Supreme Court Cases 752 in particular paragraph 15 which is reproduced below:-

> "It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The court should decide the matters on merits

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorize the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants."

In the case law cited by the learned Government Advocate, an application for grant of leave to appeal was made in terms of Section 378 (3) Cr.P.C 1973 by the State of Nagaland which was duly accompanied by an application for condonation of delay of 57 days. In that case, it was shown in detail as to how the file moved in the Department till the appeal was filed. In other words, it was shown as to when the copy of the order was received by the Department, when did the Department put up with relevant documents for necessary action before the concerned authority and when did the concerned authority forward the file for consideration to another authority and how the file was found missing and could not be traced inspite of best

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M.A.(C) No. 231 05

मामला क्रमांक ..... सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

efforts. It was also shown that ultimately when orders were passed for reconstructing the file, the missing file suddenly appeared in the office of authority concerned and thereafter acting bonafide the appeal was filed though after a delay of 57 days.

It is not the law that in every case where there is delay in filing of appeal by the State, it should be condoned automatically without considering whether there is sufficient cause for the delay. The State like any other litigant is under an obligation to show sufficient cause for the delay by showing when the copy of the impugned order was obtained and how and when the file moved in its legal Departments and at what stages. It is only then that it could be taken into consideration that Government decisions which are taken by officers proverbially at a slow pace encumbering the process of pushing the files from table to table and keeping it on the table for considerable time causing delay, intentional or otherwise is a routine. If the appellant produces material before the Court which shows as to how the files moved in its legal Department and explains the cause of delay, then certain amount of latitude is not impermissible in favour of the State as an appellant. To reiterate the mere fact that the appellant is the State and procedural delay is the rule in government departmental functioning, would not by itself constitute a sufficient cause for condonation of delay in every case.

In the present case, it is seen that after the impugned order dated 22.9.2005 was passed by the Court of Commissioner for Workmen's Compensation (Labour Court) Jagdalpur, no material is placed on record to show as to when the copy of the award was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	obtained and how the files moved before the legal Department of the State. Even in the application filed for condonation of delay, no material whatsoever has been placed before this Court to permit certain amount of latitude in favour of the State Government. It is also pertinent to note that the affidavit of the concerned officer filed in support of the application for condonation of delay is also wholly silent on this point. The huge delay of 441 days without there being any details whatsoever of the movement of files in the legal department does not deserve to be condoned. In this view of the matter, the facts and circumstances of the case law cited by the learned Government Advocate are clearly distinguishable and do not apply to the present case. No ground whatsoever has been made out by the State of Chhattisgarh for condonation of the inordinate delay of 441 days in filing this appeal. In this view of the matter, since the application does not disclose any satisfactory explanation for condonation of the huge unexplained delay of 441 days, the appeal is hopelessly barred by limitation and the delay of 441 days in preferring this appeal, does not deserve to be condoned. Accordingly, M.C.P. No. 329/2007 for condonation of delay is dismissed and as a result thereof this appeal is also dismissed as barred by limitation. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	

Priya

P.T.O.